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# UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/058,595	01/28/2002	Susan Flappan	2845	4083

27910 7590 11/27/2002

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EXAMINER

CROSS, LATOYA I

ART UNIT

PAPER NUMBER

1743

DATE MAILED: 11/27/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/058,506 ~~595~~

Applicant(s)

FLAPPAN, SUSAN

Examiner

LaToya I. Cross

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 January 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.5                      6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 9 recites, "for subsequent combination of said slide thereon". It is unclear what Applicants intend by this phrase. Clarification is requested.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in–

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

4. Claims 1, 2, 4-7, 9, 10, 12-14 and 16-20 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent 6,447,463 to Borkowski (hereinafter Borkowski '463).

Borkowski '463 teaches a fungal infection diagnostic kit. The kit includes a translucent diagnostic slide having a retractable self-adhesive translucent tape thereon. With respect to claim 1, the releasable self-adhesive tape (2) has a window (3) that is affixed to the plastic slide

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(1), after trapping a sample on the "sticky side" of the tape. With regard to claims 4 and 5, a rectangular piece of glossy paper (6) is attached to the back of the adhesive tape. This rectangular paper serves as a tab to help the user in manipulating the sample and/or the slide. Figure 1 of Borkowski '463 shows a kit box for storing the slide structure and transporting the sample back to the laboratory, as recited in claims 2, 9, 19 and 20. Regarding claims 6, 12-14, 17 and 18, Borkowski '463 teaches that the kit can include a data form to be completed by the user requesting information regarding the sample, conditions of the sample and other information (col. 4, lines 9-16). The test slide also contains a bar code (4, 5) or other identifier. In using the diagnostic kit of Borkowski '463, the user touches the contaminated area with the adhesive tape, preferably in the window portion, to lift off a sample of the contaminated area. The tape is then attached to the slide and sent to the laboratory for testing. The sample is stained and examined under a microscope by a technician. Results from the test are reported back to the user.

It is noted that Applicant's claimed are directed primarily to detecting mold. Since mold is a fungus, the Borkowski '463 reference is broad enough to read on Applicants' claims.

Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be anticipated, within the meaning of 35 USC 103 in view of the teachings of Borkowski '463.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 3, 8, 11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borkowski '463 in view of US Patent 5,766,677 to Dimou et al (hereinafter Dimou et al '677).

The disclosure of Borkowski '463 is described above.

Borkowski '463 fails to teach 1) a plurality of test tapes on the slide and 2) a grid structure on the window.

With respect to a plurality of test tapes, test kits are conventionally manufactured with several testing elements. This allows for multiple samples to be tested and for multiple tests to be run on a sample. It would have been obvious to one of ordinary skill in the art to include a plurality of test tapes in the kit of Borkowski '463 to allow several samples to be taken and sent to the laboratory. This would increase the amount of sample the technician can use in conducting the analytic tests and also would increase the chance of collecting sample that may be contaminated.

With respect to a grid structure on the window, Dimou et al '677 teaches a cover slip for a microscope slide having viewing fields marked thereon in the form of a grid. Dimou et al '677 teaches that the grid patterns make it possible for a user to identify a limited or restricted portion of the slide and analyze specific components within a field of the grid. See col. 1, lines 14-18. Thus, it would have been obvious to one of ordinary skill in the art to incorporate a grid

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pattern on the window portion of the test slide of Borkowski '463 to narrow particular viewing fields and allow analysis of specific components within a particular field.


Therefore, for the reasons set forth above, Applicants' claimed invention is deemed to be obvious, within the meaning of 35 USC 103 in view of the teaching of Borkowski '463 and Dimou et al '677.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LaToya I. Cross whose telephone number is 703-305-7360. The examiner can normally be reached on Monday-Friday 8:30 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill A. Warden can be reached on 703-308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

LIC  
November 4, 2002

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700